STATE OF MICHIGAN

IN THE SUPREME COURT

CHARLES SINGTON,

Plaintiff-Appellee,

S. C. NO.: 119291

C.A. NO.: 225847

V

L.C. NO.: WCAC 99-0110

CHRYSLER CORPORATION, a/k/a
DAIMLERCHRYSLER CORPORATION,

Defendant-Appellant.

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BRIEF AMICUS CURIAE
OF THE
MICHIGAN CHAMBER OF COMMERCE AND DETROIT REGIONAL CHAMBER

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

PAGES

CASES

STATUTES

PUBLIC ACT

ISSUES

I.

THE MICHIGAN COURT OF APPEAL'S DECISION BELOW ERRONEOUSLY RELIED ON POWELL v CASCO NELMOR CORP, 406 MICH 332 (1979), WHICH WAS OVERRULED BY THE 1981 AND 1987 LEGISLATIVE AMENDMENTS TO THE "WDCA", AND IN ANY EVENT WAS WRONGLY DECIDED.

II.

POWELL AND HASKE ARE IRRECONCILABLE. POWELL CANNOT BE RECONCILED WITH DISABILITY DETERMINATIONS UNDER MCL 418.301(4).

STATEMENT OF FACTS

On January 4, 2002, this Court entered a miscellaneous order granting the Defendant-Appellant's application for leave to appeal. In its order this Court directed the parties to answer several questions, including whether Powell v Casco Nelmore Corp, 406 Mich 332 (1970) and Haske v Transport Leasing, Inc, 455 Mich 628 (1997) are reconcilable. This Court also told the parties to discuss whether Powell or Haske can be reconciled with disability determinations under MCL 418. 301(4), and weekly wage loss benefit determinations in light of subsequent reasonable employment under MCL 418.301 (5) and MCL 418.301 (9). This Court further instructed the parties to address whether and to what extent a subsequent event may end entitlement to disability benefits by breaking the causal relationship between a work-related injury and wage loss. Finally, this Court invited persons or groups interested in the determination of the questions to move for permission to file briefs amicus curiae.

The Michigan Chamber of Commerce ("MCC") and the Detroit Regional Chamber ("DRC") submit this brief amicus curiae at the invitation of this Court on behalf of their collective membership. They adopt the Statement of Facts and Arguments set forth in the Defendant-Appellant's brief in support of Appeal. The purpose of this Brief is to inform this Court of the business community's opposition to the decision of the Court of Appeals and to offer additional arguments against the continued application of Powell, a case that employers throughout the State of Michigan had properly assumed had been overruled by the 1981 and 1987 amendments to the Workers' Disability Compensation Act (WDCA").

ARGUMENT I

THE MICHIGAN COURT OF APPEAL'S DECISION BELOW ERRONEOUSLY RELIED ON POWELL v CASCO NELMOR CORP, 406 MICH 332 (1979), WHICH WAS OVERRULED BY THE 1981 AND 1987 LEGISLATIVE AMENDMENTS TO THE "WDCA", AND IN ANY EVENT WAS WRONGLY DECIDED.

A. LEGISLATION ENACTED IN 1981 AND 1987 CLEARLY OVERRULED THE HOLDING IN POWELL

Whereas the *Dunavant-Dalton Rule* preserved the requirement that there must be some nexus between the loss of income and the industrial injury to receive full benefits, Powell negated any such requirement. Obviously Powell was bad law and the appropriate subject matter for legislative intervention. See discussion, supra.

In 1981, the Legislature amended the "WDCA" to include a definition of "disability". That definition was revised by the Legislature in 1987. The original definition of "disability" preserved the distinction between common labor and skilled employment. The later definition eliminated the archaic distinction between common labors and skilled tradesmen, a distinction that had at times produced absurd results and was no longer meaningful in an age of technology. See Kaarto v Calumet & Hecla, Inc., 367 Mich 128; 116 NW2d 225 (1962)

Thus under the definition of disability set forth in 1981 PA 200, an injured worker was disabled if he/she suffered "a limitation of an employee's wage earning capacity in

the employee's general field of employment **resulting from a personal injury or work related disease** (Emphasis added)". Under the revised definition of disability set forth in 1987 PA 28, an injured employee is disabled if the record demonstrates a "limitation of an employee's wage earning capacity in work suitable to his or her qualifications and training **resulting from a personal injury or work related disease** (Emphasis added)".

Both definitions require a showing of a causal link between the limitation in earning capacity and the personal injury or work related disease, a requirement that was eliminated by Powell. Obviously, both definitions of disability were intended to overrule Powell and require a causal nexus between the post supervening event wage loss and the personal injury or work related disease. Based upon the Legislature's amendments to the WDCA, there can be no genuine dispute that Powell has no continuing application in interpreting the WDCA.

B. POWELL OVERTURNED THE BETTER REASONED *DUNAVANT-DALTON RULE* ADOPTED BY THIS COURT

Prior to June 18, 1979, Michigan followed the better reasoned *Dunavant-Dalton Rule.* This rule applied to partially impaired workers who were rendered totally disabled by virtue of supervening non-industrial events while performing favored work. It required partially impaired workers who were performing favored work at the time of the supervening non-industrial event to demonstrate that their wage loss was attributable to their accidental injury or some act on the part of the employer to be entitled to the reinstatement of full benefits. See Dunavant v General Motors Corp. 325 Mich 482 (1949) and Dalton v Candler-Rusche, Inc., 65 Mich App 282 (1975).

The *Dunavant-Dalton* rule was time honored. Further, it was consistent with workers' compensation law across the land that required some nexus between the wage loss and the personal injury or work related disease to support an award of full benefits.

On June 18, 1979, the *Dunavant-Dalton Rule* was cast aside by this Court in Powell v Casco Nelmor Corp, 406 Mich 332 (1979). For the next two years, partially impaired workers, regardless of their post injury work histories, were automatically entitled to the payment of full benefits following a totally disabling supervening non-industrial event, even though their wage loss had nothing whatsoever to do with their prior work related injury or some act by their employer.

The abandonment of the *Dunavant-Dalton Rule* eliminated any opportunity for an employer to mitigate damages. It also clothed a partially disabled worker with greater protection at law than his/her able bodied counterpart. For example, if two identical twins were hired by the same employer on the same day to perform the same work, at the same rate of pay and one of the twins happened to have the good fortune to slip and fall at work and sustained an injury which precluded performing some theoretical job, but did not result in a loss of wages, and both twins suffered genetically preordained strokes at precisely the same time, then the twin who was lucky enough to have slipped and fallen at work would receive full weekly benefits and the other twin would receive nothing. This would occur even though their incomes were identical both before and after the injury and the sole reason for their wage loss was their stroke, an event that would have rendered both twins disabled at precisely the same time regardless of their prior work histories..

The above result is absurd. It completely ignores the fundamental principle underlying workers' disability compensation legislation; namely, although benefits are payable without regard to fault, there must be some nexus between the employment and the wage loss. The wage loss above was precipitated by a non-industrial stroke. The stroke and subsequent inability to work would have occurred even if the employee had never worked a day in his life. Scour the annals of workers' disability compensation claims as this Court may, it will not find support for the premise that an employee is entitled to benefits simply because he/she was fortunate enough to have been injured on the job before he/she was rendered totally disabled due to some incident that had nothing to do with the personal injury or work related disease, or for that matter, an act by the employer. Clearly, this Court must reverse the Court of Appeals herein and reinstate the requirement of a causal relationship between the lost wages and the personal injury or work related disease to support an award of workers' disability compensation benefits.

ARGUMENT II

POWELL AND HASKE ARE IRRECONCILABLE. POWELL CANNOT BE RECONCILED WITH DISABILITY DETERMINATIONS UNDER MCL 418.301(4).

This Court set forth a simple three prong standard in Haske when interpreting the 1987 definition of disability provided by the Legislature. The test announced by this Court in Haske requires an injured worker to prove: 1) the occurrence of a personal

injury; 2) a loss of wages; and 3) a link between the wage loss and the personal injury to comply with MCL 418.301(4).

This Court went on to state that "[a]n employer may refute the causal connection between the partial disability and the employee's unemployment with evidence that other factors are the cause of the unemployment, **e.g., an employee's ailments that are unrelated to his previous employment or malingering"** (Emphasis added. Haske at p 662, note 38). Powell is inconsistent with the third prong of Haske. It completely negates an employer's ability to avoid liability by showing that the wage loss is attributable to an employee's ailment that has nothing to do with either the personal injury or work related disease and/or an act of the employer. Clearly, Powell cannot be reconciled with either Haske or MCL 418.301(4).

The reasonable employment provisions apply, if and only if, there is a showing of continued disability pursuant to MCL 418.301(4) [Haske]. This requirement was ignored by the Court of Appeals herein. Instead of applying Haske, the Court of Appeals provided for an award of benefits in the absence of any causal relationship between the employment and the wage loss. It eliminated the requirement of some nexus between the employment and the wage loss to sustain an award of benefits. In essence, it turned the employer into an insurer of ordinary diseases of life and/or mishaps that have nothing to do with the workplace.

Although Haske would preclude an injured worker from receiving full benefits during the period of convalescence following a supervening non-industrial event that precludes the performance of favored work, it would not prevent the reinstatement of benefits if the employee were to recover sufficiently to resume employment. If such a

recovery were to occur and the employee were then unable to obtain work because of residuals from the prior personal injury or work related disease, then the partially impaired worker would be entitled to the reinstatement of benefits. This would occur because there would once again be a causal relationship between the wage loss and the personal injury or the work related disease. At this juncture, the reasonable employment provisions would again govern the relationship between the parties.

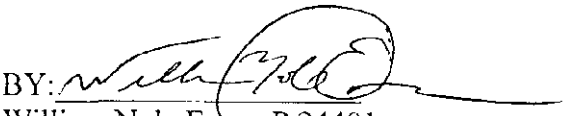
It is axiomatic that Workers Disability Compensation Law is premised upon the principle that the cost of the production of the product, including personal injuries, will ultimately be borne by the consumer of the product. Powell negates this principle by passing on to the consumer of the product, the cost of supervening events, incidents that have nothing to do with the cost of production. The Legislature sought to bring the law back into line with this principle through its 1981 and 1987 definitions of disability. These definitions were conscious efforts by the Legislature to rescind bad law that negated the time-honored requirement that there must be a showing of a causal relationship between the personal injury or a work related disease and the loss of income to support an award of benefits.

The Court of Appeals ignored the Legislature's definitions of "disability". It erred as a matter of law in providing for an award of workers' disability compensation benefits in the absence of some nexus between the employment and the wage loss for which benefits were being sought. Clearly, the decision of the Court of Appeals must be reversed to bring the law back in line with the principles upon which the "WDCA" was founded.

RELIEF SOUGHT

The "MCC" and the "DRC" respectfully request that the decision of the Court of Appeals be reversed and the holding of Powell be either overruled or limited to adjudications occurring prior to the effective date of 1981 PA 200. The "MCC" and "DRC" further request that this Court revisit Haske and in no uncertain terms rule that benefits are inappropriate where the employer demonstrates that the wage loss is attributable to something other than the personal injury or work related disease and can not be explained on the basis of some act by the employer. That is, the "MCC" and "DRC" respectfully ask this Court to reinstate the time-honored principle that an order compelling the payment of compensation must be premised upon a showing that the wage loss is attributable to the personal injury or some act of the employer, not a supervening non-industrial event that renders the employee incapable of generating an income.

Respectfully submitted,
Evans, Pletkovic & Rhodes, P.C.

BY: 

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